

FILE COPY

Office - Supreme Court U. S.

WILLARD

OCT 1 1942

CHARLES ELMORE CROPLE
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 85.

J. BUCKNER FISHER, Receiver of The First National Bank of
Chattanooga, Tennessee, *Petitioner*;

v.

LOUISE WHITON, Executrix of the Estate of Annie R. Not-
tingham, Deceased;

O. B. WUNSCHOW, Executor of the Estate of Mildred Wil-
liams, Deceased;

GEORGE C. MCKENZIE, Receiver and Commissioner for R. A.
LOWERY, J. A. LOWERY and KATHERINE TULLOCK, chil-
dren of CLARA LOWERY; *et al.*

BRIEF OF PETITIONER.

✓ S. BARTOW STRANG,
Attorney for Petitioner.

✓ JOHN F. ANDERSON,

✓ LEE ROY STOVER,

✓ HARRIET BUCKINGHAM,

*Attorneys for the Comptroller of the Currency,
Of Counsel.*

INDEX.

SUBJECT INDEX.

	Page
I. Opinions and Decrees of Courts Below.....	1
II. Jurisdiction	2
III. Summary Statement	3
IV. Specification of Errors	9
V. The Question Presented	9
VI. Statutes Involved	10
VII. Summary of Argument	10
VIII. Argument	11
<p>The receiver's cause of action upon the assessment claim did not accrue until April 15, 1935, the date last fixed for payment of the assessment by the Comptroller of the Currency and consequently the receiver's cross bill asserting said assessment claim against the Estate of C. C. Nottingham was not barred under the applicable state statutes of limitations.</p>	
(a) The Federal Statutes	11
(b) Policy and Practices followed by the Comptroller of the Currency in administering the assessment statutes under the decisions of this Court and other Federal Courts.....	12
(c) The Tennessee Statutes	23
IX. Conclusion	27
Appendix	29

CASE CITATIONS.

	Page
Adams v. Nagle, 303 U. S. 532	22
Atkinson v. Brooks, 18 Tenn. 484	24
Barbour v. Thomas, (C. C. A. 6, 1936) 86 F. (2d) 510, cert. denied 300 U. S. 670	15
Bernheimer v. Converse, (1907) 206 U. S. 516	15
Blevins v. Alexander, 36 Tenn. 583	25
Bradford v. McLemore, 11 Tenn. 318	24
Brewster v. Gage, (1930) 280 U. S. 327	16
Brown v. United States, (1885) 113 U. S. 568	16
Caplinger v. Vaden, 24 Tenn. 629	24
Chesapeake & Ohio Ry. v. Martin, 283 U. S. 209	23
City of Knoxville v. Gervin, (1936) 169 Tenn. 532, 89 S. W. (2d) 348	25
Coffey v. Fisher, (C. C. A. 6) 100 F. (2d) 51	20, 23, 24
Cook County National Bank v. United States, 107 U. S. 445	12
Corsicana National Bank of Corsicana v. Johnson, (1919) 251 U. S. 68	15, 16
Culhane v. Smith, (Ill. 1937) 19 F. Supp. 226	15
Deitrick v. Greaney, 309 U. S. 190	12
Forrest v. Jack, 294 U. S. 158	12, 22
Garvy v. Wilder, (C. C. A. 7, 1941) 121 F. (2d) 714	15
Gillespie v. Broadway Nat'l Bank, 167 Tenn. 245	24
Greenway v. Hunter, 19 Tenn. 73	24
Haight v. First Trust & Deposit Co., (N. Y. 1940) 33 F. Supp. 72; aff'd. (C. C. A. 2, 1940) 112 F. (2d) 572	15
Haight v. Franklin (C. C. A. 2, 1942) 125 F. (2d) 461	15
Hall v. Ballard, (C. C. A. 4, 1937) 90 F. (2d) 939	15
Hardesty v. Corrothers, (W. Va. 1940) 31 F. Supp. 365	15
Heath v. Wallace, (1891) 138 U. S. 573	16
Henry v. Mills, 69 Tenn. 144	24
Howell v. Fogg, (C. C. N. J. 1939) 7 A. (2d) 282	15
Inland Waterways Corporation v. Young, (1940) 309 U. S. 517	15, 16
Jones v. Whitworth, (1895) 94 Tenn. 602, 30 S. W. 736	24, 25
Kennedy v. Gibson, 8 Wall. 498	22
Korbly v. Springfield Institution for Savings, (1917) 245 U. S. 330	18

Index Continued.

iii

	Page
MacPherson v. Schram, (C. C. A. 5, 1940) 112 F. (2d) 674	15
Matteson v. Dent, 176 U. S. 521	12
Maynard v. May, 42 Tenn. 44	24
Meeker v. Oramam Realty Corp., (App. Div. N. Y. 1938) 2 N. Y. S. (2d) 574, aff'd. 281 N. Y. 868, 24 N. E. (2d) 502	15
Morristown v. Davis, (1937) 172 Tenn. 159, 110 S. W. (2d) 337	25
Pufahl v. Estate of Parks, 299 U. S. 217	12, 14
Rankin v. Barton, (1905) 199 U. S. 228	2, 19
Rankin v. Miller, (Del. 1913) 207 Fed. 602	15
Rawlings v. Ray, (1941) 312 U. S. 96	2, 14, 15, 24
Reeves v. Pulliam, 66 Tenn. 119	24
Reich v. Van Dyke, (C. C. A. 3, 1939) 107 F. (2d) 682	15
Schram v. Costello, (Mich. 1940) 36 F. Supp. 525	15
Schram v. Tobias, (Mich. 1941) 40 F. Supp. 470	15
Seabury v. Green, (1935) 294 U. S. 165	2, 12, 22
Strasburger v. Schram, (App. D. C. 1937) 93 F. (2d) 246	15, 16
Studebaker v. Perry, 184 U. S. 258	20
Trott v. West, 17 Tenn. 433	24
United Land Assn. v. Abrahams, 208 U. S. 614	23
United States v. Finnell, (1902) 185 U. S. 236	16
United States v. Jackson, (1930) 280 U. S. 183	16
United States v. Johnston, (1888) 124 U. S. 236	16
United States v. Knox, 102 U. S. 422	20
United States v. Moore, (1877) 95 U. S. 760	16
Ward v. Rice, (Pa. 1939) 29 F. Supp. 714	15
White v. Liskovsky, (N. J. 1938) 3 A (2d) 123	15
Woods v. Woods, 99 Tenn. 50	24

STATUTE CITATIONS.

Sec. 237(b) of the Judicial Code (U. S. C., title 28, sec. 344(b))	2
R. S., sec. 5151; December 23, 1913, c. 6, sec. 23, 38 Stat. 273 (U. S. C., title 12, sec. 63)	2, 10, 11
Act of December 23, 1913, c. 6, sec. 23, 38 Stat. 273 (U. S. C., title 12, sec. 64)	2, 10, 11
R. S., sec. 5152 (U. S. C., title 12, sec. 66)	2, 10, 11

	Page
Act of June 30, 1876, c. 156, sec. 1, 19 Stat. 63 (U. S. C., title 12, sec. 191)	10, 11
R. S., sec. 5234; May 15, 1916, c. 121, 39 Stat. 121; August 23, 1935, c. 614, sec. 339, 49 Stat. 721 (U. S. C., title 12, sec. 192)	2, 10, 11
Michie's Tennessee Code of 1932, sec. 8225 ..	7, 10, 13, 23, 25
Michie's Tennessee Code of 1932, sec. 8601	10
Michie's Tennessee Code of 1932, sec. 8604	10, 23, 26
Michie's Tennessee Code of 1932, sec. 8608	10, 23

MISCELLANEOUS CITATIONS.

7 Am. Jur., sec. 147, page 116	15
78th Annual Report of the Comptroller of the Currency, (House Doc. #25, 77th Congress, 1st Session, Table No. 68, pp. 330, 372)	16, 21
2 Morse on Bank & Banking, (6th Edition) sec. 678	15

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 85.

J. BUCKNER FISHER, Receiver of The First National Bank of
Chattanooga, Tennessee, *Petitioner*,

v.

LOUISE WHITON, Executrix of the Estate of Annie R. Not-
tingham, Deceased;

O. B. WUNSCHOW, Executor of the Estate of Mildred Wil-
liams, Deceased;

GEORGE C. MCKENZIE, Receiver and Commissioner for R. A.
LOWERY, J. A. LOWERY and KATHERINE TULLOCK, chil-
dren of CLARA LOWERY; *et al.*

BRIEF OF PETITIONER.

I.

OPINIONS AND DECREES OF COURTS BELOW.

The Memorandum Opinion of the Chancery Court of Hamilton County, Tennessee, (R. 84-87) is not reported. The Chancery Court's decree appears in the Record at pages 88-89. The opinion of the Court of Appeals of Tennessee is reported in 155 S. W. (2d) 882 and appears in the

Record at pages 90-95. The decree of the Court of Appeals appears in the Record at page 95. The order of the Supreme Court of Tennessee denying (without opinion) the petition for writ of certiorari is in the Record at page 97.

II.

JURISDICTION.

Writ of certiorari was granted on June 8, 1942 (R. 102) under Section 237 (b) of the Judicial Code (U. S. C., title 28, sec. 344 (b)) providing for the granting of a writ of certiorari by this Court to review a final judgment or decree of the highest court of a state in which a decision could be had in a suit:

“where any title, right, privilege, or immunity, is specially set up or claimed by either party under the Constitution, or any treaty or statute of . . . the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied . . .”

Petitioner's authority as Receiver of First National Bank of Chattanooga, Tennessee, to collect the assessment, is contained in the National Banking Laws. (U. S. C., title 12, secs. 63, 64, 66, 192; Appendix pp. 29 to 31). Section 8225 of the Tennessee Code (Appendix p. 31) required the claim of petitioner, as receiver, to be asserted or filed against the Estate within six months from the date “the cause of action thereon accrued.” The question presented was whether the cause of action accrued on May 26, 1934 (the stock assessment payment date first fixed by the Comptroller of the Currency) or April 15, 1935, the final date of payment fixed by the Comptroller in his last order of extension; which question involves the authority of the Comptroller to fix a later or future date for payment. It seems clear this does present a Federal question. *Rawlings v. Ray* (1941) 312 U. S. 96; *Seabury v. Green* (1935) 294 U. S. 165; *Rankin v. Barton* (1905) 199 U. S. 228.

III.

SUMMARY STATEMENT.

The facts are not in controversy and are disclosed upon the face of the record.

On July 24, 1935, (R. 1-6) Mrs. Annie R. Nottingham, widow of C. C. Nottingham, and sole beneficiary under his will, filed her original bill, as executrix of the Estate of C. C. Nottingham and also in her individual capacity, in the Chancery Court of Hamilton County, Tennessee, against petitioner's predecessor, Charles S. Coffey, as Receiver of the First National Bank of Chattanooga, Tennessee, and against present respondents O. B. Wunschow, Executor of the Estate of Mildred Williams, deceased, and George C. McKenzie, Receiver and Commissioner for R. A. Lowery, J. A. Lowery and Katherine Tullock, children of Clara Lowery; et al., as creditors of or claimants against the estate of said C. C. Nottingham for the purposes, *inter alia*: of establishing priority of her claims to the assets of the estate as against the other creditors and claimants of the estate; for the sale of the real estate to satisfy debts of the decedent's estate; and to require all creditors and claimants to appear in the cause and establish their claims.¹

The answer and cross bill of petitioner's predecessor, Charles S. Coffey, as receiver of the First National Bank of Chattanooga, filed on August 2, 1935 (R. 6-11) alleged that

¹ Paul J. Kent, former Receiver of the Chattanooga National Bank, Chattanooga, Tennessee, was also named party defendant in said cause and participated in said proceedings. He was later succeeded in office by your petitioner, J. Buckner Fisher, as Receiver also of said Chattanooga National Bank. (R. 65) The claims on behalf of the Chattanooga National Bank receivership were decided adversely to said receivership by the courts below, upon grounds entirely different from those assigned by the courts below in rejecting the claim of your petitioner, J. Buckner Fisher, as Receiver of the First National Bank of Chattanooga, Tennessee. The proceedings in the courts below, insofar as they relate to the claims on behalf of the Chattanooga National Bank receivership, may be disregarded as having no relation to the claims on behalf of the First National Bank receivership.

on January 3, 1934, (R. 8) the Comptroller of the Currency of the United States had appointed said Charles S. Coffey, receiver of said bank, by reason of its insolvency, and that he was still serving as such receiver at the time of the filing of said answer and cross bill. That at the time of the death of said C. C. Nottingham on April 6, 1929 (R. 6) said decedent was the owner of record of certain shares of stock of said First National Bank; that shortly after the qualification of said Annie R. Nottingham as executrix under the will of said C. C. Nottingham, she had sold, from time to time, 400 shares of said stock, leaving a residue of 1380 shares of the par value of \$100 each still belonging to the estate which had not been transferred upon the books of the bank prior to its suspension on January 3, 1934, and that said 1380 shares of stock, at the time of the filing of the answer and cross bill of said Charles S. Coffey, as receiver, still stood on the books in the name of C. C. Nottingham.

Said Charles S. Coffey, as such receiver, further alleged (R. 8-9):

That on April 19, 1934, the Comptroller had levied an assessment against the stockholders of said First National Bank for 100 per cent of the par value of each and every share of said stock, payable at the office of the receiver on or before May 26, 1934;

That on May 17, 1934, (prior to said due date) the Comptroller had extended the time for payment of said assessment, subject to such further order in the premises as he might make;

That on June 19, 1934, the Comptroller entered an order extending the time of payment of said assessment to June 26, 1934;

That on June 22, 1934, (prior to said due date) the time of payment of said assessment was again extended by the order of the Comptroller, subject, however, to such further order as he might make in the premises;

That on March 11, 1935, the Comptroller entered an order fixing the time of payment of said assessment as April 15, 1935, said assessment to bear interest at the rate of 6 per cent per annum (the legal rate of interest in the State of Tennessee) from and after April 15, 1935, if unpaid on that date;

That on March 13, 1935, said Charles S. Coffey, as receiver of said bank, had given notice of said assessment to each and every stockholder of the bank, including said Annie R. Nottingham as executrix of the estate of said C. C. Nottingham;

That said Annie R. Nottingham as executrix of the estate of C. C. Nottingham, was indebted to said Charles S. Coffey, as such receiver in the sum of \$138,000, with interest thereon from April 15, 1935, and that the assets of said estate were charged with an equitable lien for the payment of said claim and that he was entitled to an accounting from said executrix of all of the assets of the estate which had come into her hands as executrix.

And said Charles S. Coffey, as such receiver, thereupon prayed, *inter alia*, that the said cross bill be sustained as a bill for the administration of the estate of said C. C. Nottingham in the Chancery Court of Hamilton County; that all persons having an interest in said estate be required to establish their claims therein; that the case be referred to a Master for appropriate disposition, etc., etc.

On October 5, 1935, said Annie R. Nottingham, as executrix of the estate of C. C. Nottingham, filed her answer (R. 21) to said cross bill of said Charles S. Coffey, receiver, wherein she admitted (insofar as material to the issues here involved) the ownership by said estate of C. C. Nottingham of said 1,380 shares of stock of said bank; that she had been advised and believed that said estate did owe the receiver the sum of \$138,000 by reason of said assessment (although not admitting liability as to interest); that said

receiver was entitled to an accounting (R. 23) and that she was willing to submit to the administration of said estate by said Chancery Court of Hamilton County (R. 22; 24).

On April 6, 1937, (R. 59-60) George C. McKenzie "as special receiver and commissioner for R. A. Lowery * * *" (one of the defendants named in said original bill of said Annie R. Nottingham, executrix), filed answer to said cross bill of said Charles S. Coffey as said receiver of said First National Bank, wherein said George C. McKenzie as special receiver, etc., objected to the allowance of the claim of said Charles S. Coffey, as such receiver, against the estate of C. C. Nottingham, on the ground that said claim was barred by the provisions of sec. 8225 of the 1932 Code of Tennessee (see Appendix hereof page 31, in that:

Said section required a claim against the estate of a decedent to be filed within "six months from the date the cause of action thereon accrued" and alleging that inasmuch as said assessment claim of said receiver of said bank had accrued on April 19, 1934 (the date the Comptroller of the Currency had levied said assessment) and said receiver had not filed said assessment claim against the estate of said C. C. Nottingham within 6 months from April 19, 1934, said assessment claim was barred by said sec. 8225 as a claim against said estate of C. C. Nottingham.

On September 8, 1938, the Chancery Court of Hamilton County, by appropriate order duly entered (R. 63) permitted said O. B. Wunschow, as executor of the estate of Mildred W. Williams, deceased, (one of the codefendants named by said Annie R. Nottingham, executrix, in her original bill of complaint) to file a plea (R. 62-63) to the effect that said claim of said Charles S. Coffey, as receiver, against said estate of C. C. Nottingham was barred by the provisions of said sec. 8225 of said Code of Tennessee in that said assessment claim had not been filed against said C. C. Nottingham estate within 6 months from April 1934.

By appropriate order enrolled May 10, 1940, your petitioner, J. Buckner Fisher, was substituted in said proceed-

ings in place of said Charles S. Coffey (resigned) as receiver for said First National Bank. (R. 65).

Thereafter, it appearing that said Annie R. Nottingham had died, said proceedings were, under Tennessee practice, revived, by an order enrolled July 6, 1940, which provided:

"In Chancery Court of Hamilton County

"Order Admitting Death of Annie R. Nottingham, and Reviving Cause Against Louise Whiton; Executrix —Enrolled July 6, 1940

"In this cause it is admitted that complainant and cross defendant, Annie R. Nottingham, has died since the last term of court, and that Louise Whiton is the Executrix of said Annie R. Nottingham, and that all parties to the suit by their respective solicitors admitting said facts, by their consent, this cause is revived against Louise Whiton, as Executrix, and is ordered to stand in the same plight and condition which it was at the time of the death of said Annie R. Nottingham." (R. 65).

By memorandum opinion filed January 22, 1941, the Chancery Court of Hamilton County held that said assessment claim of your petitioner, as receiver of said First National Bank, against the estate of C. C. Nottingham "accrued at the time first fixed by the Comptroller on *May 23, 1934,*² and not at a future time as insisted by the receiver", and that said claim was barred under the provisions of said section 8225 of the Code of Tennessee inasmuch as the cross bill of the receiver to establish said assessment claim against said estate had not been filed until August 2, 1935, and hence that said suit had not been filed within the period of six months from the date of accrual as required by said section 8225 of said Code. (R. 84, 86, 87). The formal decree of the Chancery Court sustaining said defense of the statute of limitations appears in the Record at pages 88-89.

² This date should be May 26, 1934; see record page 8.

Exceptions to the foregoing ruling of the Chancery Court were duly filed by your petitioner, as receiver of said bank (R. 89) and in due course appeal was filed in the Court of Appeals of Tennessee wherein your petitioner, as such receiver, assigned as error (R. 89-90) that said assessment had not become due and payable until April 15, 1935, (the last date for payment fixed by the Comptroller) (R. 9), and that inasmuch as the cross bill asserting the assessment claim against the estate had been filed August 2, 1935, (R. 6) said claim had been duly asserted within less than the period of six months from the date of accrual thereof (as required by said section 8225 of said Tennessee Code) and hence, that the Chancery Court of Hamilton County had erred in ruling that the same was barred by said statute of limitations.

Under date of August 9, 1941, the Court of Appeals of Tennessee filed an opinion wherein it affirmed the opinion and decision of the Chancery Court and held that said assessment claim of your petitioner, as receiver of First National Bank, was barred under the provisions of said section 8225 of said Tennessee Code. (R. 90).

Petition for writ of certiorari was filed by your petitioner, as receiver of First National Bank of Chattanooga, in the Supreme Court of Tennessee,—

“in due course and in accordance with the rules and requirements of the Supreme Court of Tennessee”.
(R. 103).

including appropriate assignments of error as the basis thereof (R. 96).

The Supreme Court of Tennessee denied the petition for writ of certiorari, without passing upon the merits of the contentions of your petitioner. (R. 97).

IV.

SPECIFICATION OF ERRORS.

The Court of Appeals of Tennessee erred in holding:

(1) That the cause of action of the Receiver of the First National Bank of Chattanooga, Tennessee, upon his assessment claim against the Estate of C. C. Nottingham, deceased, accrued on May 26, 1934, the date of payment first fixed by the order of the Comptroller, and hence that the cross-bill filed by the receiver on August 2, 1935 (R. 6) against said estate to recover said assessment was barred under the provisions of Section 8225 of the Tennessee Code.

(2) That the Comptroller,—having fixed May 26, 1934, as the date for payment of said assessment,—was without authority, under the National Banking Laws, to make orders from time to time, further extending the date of payment of said assesment, including the order of March 11, 1935, extending the payment date of said assessment to April 15, 1935.

V.

THE QUESTION PRESENTED.

Did the receiver's cause of action upon the assessment claim accrue on May 26, 1934, the date first fixed by the Comptroller for the payment of said assessment, or did the Comptroller, by appropriate orders from time to time entered, have authority, under the national banking laws, to extend the time of payment to April 15, 1935, the maturity date fixed by the last order of the Comptroller? (R. 8-9).

The cross bill asserting said assessment claim against said estate of C. C. Nottingham was filed on August 2, 1935. (R. 6). Hence, if the Comptroller was without authority to extend the date of payment to April 15, 1935, the assessment claim was barred under the provisions of said section 8225 of the Tennessee Code of 1932. If the Comptroller did have authority to make such extensions, the claim was not barred.

VI.**STATUTES INVOLVED.**

Sections 5151, 5152, 5234 of the Revised Statutes, as amended; Act of June 30, 1876, c. 156, sec. 1, 19 Stat. 63; Act of December 23, 1913, c. 6, sec. 23, 38 Stat. 273; (U. S. C. title 12, secs. 63, 64, 66, 191, 192); creating personal liability of shareholders in national banks for the debts and obligations of the bank and authorizing the Comptroller, through duly appointed receivers, to enforce such liability. (Appendix pp. 29 to 31).

Sections 8225, 8601, 8604, 8608 Michie's Tennessee Code of 1932, the Tennessee Statutes of Limitations. (Appendix pp. 31 to 32).

VII.**SUMMARY OF ARGUMENT.**

The receiver's cause of action upon the assessment claim did not accrue until April 15, 1935, the date last fixed for payment of the assessment by the Comptroller and consequently the receiver's cross bill asserting said assessment claim against the estate of C. C. Nottingham was not barred under the applicable state statutes of limitations.

- (a) The Federal Statutes.
- (b) Policy and Practices followed by the Comptroller of the Currency in administering the assessment statutes under the decisions of this Court and other Federal Courts.
- (c) The Tennessee Statutes.

VIII.

ARGUMENT.

The receiver's cause of action upon the assessment claim did not accrue until April 15, 1935, the date last fixed for payment of the assessment by the Comptroller and consequently the receiver's cross bill asserting said assessment claim against the estate of C. C. Nottingham was not barred under the applicable state statutes of limitations.

(a) The Federal Statutes.

The provisions of the National Bank Act (Act of December 23, 1913, c. 6, sec. 23, 38 Stat. 273, sec. 63 and sec. 64, Title 12 U. S. C.; the Act of June 30, 1876, c. 156, sec. 1, 19 Stat. 63, sec. 191, Title 12, U. S. C.; sec. 5234 of the Revised Statutes, as amended, sec. 192, Title 12, U. S. C.) create a statutory personal liability upon national bank shareholders for the debts and obligations of the banks and authorize the Comptroller, through duly appointed receivers, to collect the stock assessment levied by the Comptroller.

Section 5152 of the Revised Statutes (U. S. C. title 12, sec. 66) provides:

"Sec. 66. Personal liability of representatives of stockholders. Persons holding stock as executors, administrators, guardians, or trustees, shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward, or person interested in such trust funds would be, if living and competent to act and hold the stock in his own name. (R. S. Sec. 5152)."

This section from the original National Bank Act (section 63 of the Act of June 3, 1864; 13 Stat. 118) expressly provides that estate funds in the hands of persons holding stock as executors or administrators shall be liable for the

stock assessment to the same extent the testator would be if living and competent to act and hold the stock in his own name. There can be no doubt of the intention on the part of Congress to impose this assessment liability on the estates of deceased persons for the benefit of the depositors and creditors of insolvent national banks. The property belonging to the estate in the hands of a fiduciary is liable to the same extent as would be the testator, if living. *Pufahl v. Estate of Parks*, 299 U. S. 217, 223; *Forrest v. Jack*, 294 U. S. 158, 162; *Seabury v. Green*, 294 U. S. 165, 168; *Matteson v. Dent*, 176 U. S. 521, 525. The obligation of the estate to pay this assessment continues unimpaired until there is a valid assignment of the shares of stock by final distribution of the estate, if not by an earlier transfer. *Seabury v. Green*, *supra*; *Forrest v. Jack*, *supra*.

The National Bank Act constitutes by itself a complete system for the establishment, government and winding up of national banks. *Cook County National Bank v. United States*, 107 U. S. 445, 448; *Deitrick v. Greaney*, 309 U. S. 190, 194.

(b) Policy and Practices followed by the Comptroller of the Currency in administering the assessment statutes under the decisions of this Court and other Federal Courts.

The undisputed facts relating to the levy of the assessment by the Comptroller against the shareholders of the First National Bank of Chattanooga providing for payment of the assessment on May 26, 1934 and the subsequent orders by the Comptroller extending the original payment date to April 15, 1935 are set forth more fully on pages 4-5 *supra*. The Chancery Court held (R. 81):

"This cause of action did not accrue until May 23, 1934,² which was after the death of Mr. Nottingham, but after his death and before the maturity of said cause of action the statute of limitations was changed

² This date should be May 26, 1934, see Record pg. 8.

as set out in Section 8225 of the Code so as to provide that *suit should be brought within six months after the cause of action accrued*, and it is insisted by the creditors who filed the exceptions that Section 8225 applied." (Italics ours).

It will be observed that the receiver's cross bill was filed on August 2, 1935 (R. 6-11) and hence if the appropriate Tennessee statute of limitation (Section 8225) providing for six months time from the date the cause of action accrued is to be counted from May 26, 1934, the receiver's cross bill was filed after the expiration of the six months period and, on the other hand, if the six months period of time accrued from April 15, 1935 suit by the national bank receiver was filed well within the six months period provided by the statute. Petitioner admits that Section 8225 of the Tennessee Code applies and bases his entire contention with respect to the error committed by the courts below to the failure of said courts to correctly determine the date on which the cause of action accrued and to give consideration to the action of the Comptroller in extending the original payment date of this stock assessment liability to April 15, 1935 by appropriate notices to the stockholders. In considering this question, the Court of Appeals of Tennessee stated (R. 93):

"It is true, of course, as held in the Rawlings case that the Comptroller cannot later obviate the self-imposed restriction upon the exercise of the right of enforcement of the claim in instituting an action prior to the date fixed for payment. This is only to require of the Comptroller the exercise of honesty and fair play. It is quite a different thing to say that the Comptroller can, by successive extensions, without the consent of the executor stop the running of the limitation period to which all other creditors are subject. The right to fix the later date for payment, though recognized in the Rawlings case, is only an implied right and should not be so extended as to embarrass and delay personal representatives in administering decedent estates."

Petitioner submits that the Court of Appeals of Tennessee fell into error in stating that the Comptroller's right to fix a later date for payment of a stock assessment is only an implied right. It seems obvious that the Court of Appeals failed to give full weight to the decision handed down by this Court on February 3, 1941 in *Rawlings v. Ray*, 312 U. S. 96, wherein it was held (at page 99):

"We find no ground for questioning the authority of the Comptroller in making an assessment to fix a later date for its payment. The Federal legislation does not impose or suggest any such limitation upon the exercise of his power. 12 U. S. C. 63, 64, 191, 192. What was done in the instant case appears to be in accord with a practice of long standing."

The state courts in the instant case have refused to give full effect to the decisions of this Court in the *Rawlings* case and have pointed to certain statements in *Pufahl v. Estate of Parks*, 299 U. S. 217, wherein this Court decided a case involving the assessment liability of a national bank stockholder's estate in Illinois, and in which case this Court affirmed the state court's decision applying a state statute and disallowing the receiver's claim upon the assessment liability as against assets in the hands of the executors because the claim did not accrue and was not presented to the Probate Court within the time permitted by the state statute. In discussing the *Pufahl* case this Court stated in *Rawlings v. Ray*, *supra*, p. 99:

"We observed that the contingent obligation of a stockholder to pay an assessment was rendered absolute by the Comptroller's action in ordering one and that from the moment of the order of assessment the receiver had a claim which would support an action at common law against a living stockholder or the executor of a deceased stockholder; that if the assessment were made after the estate had been distributed, the receiver could recover from the distributees or heirs if and up to the extent they were liable under the applicable local law."

"In all this we were not considering or deciding the question of the application of a statute of limitations to a suit against a stockholder upon an assessment made by the Comptroller where payment was not required before a specified date, prior to which no suit could be maintained."^{2a}

The courts below have failed to give full effect to the discretionary power in the Comptroller to extend the original payment date for the stock assessment liability and thus postpone the right of the receiver to enforce collection of the assessment. This Court has heretofore taken judicial notice of the administrative practices and policies of the Comptroller of the Currency. *Inland Waterways Corporation v. Young* (1940), 309 U. S. 517, 524; *Corsicana National Bank v. Johnson* (1919), 251 U. S. 68, 83; *Rawlings v. Ray* (1941), 312 U. S. 96, 99.

This Court has held that great weight may properly be given to the settled construction of a statute by the Executive Department charged with its administration and that

^{2a} A number of court decisions follow this view that the date when an assessment is made payable, rather than the date upon which it is levied, is the time when the appropriate statute of limitations starts to run. *Bernheimer v. Converse* (1907) 206 U. S. 516, 534; *Strasburger v. Schram* (App. D. C. 1937) 93 F. (2d) 246, 248; *Reich v. Van Dyke* (C. C. A. 3rd, 1939) 107 F. (2d) 682, 683; *Haight v. Franklin* (C. C. A. 2nd, 1942) 125 F. (2d) 461; *Garvy v. Wilder* (C. C. A. 7th, 1941) 121 F. (2d) 714, 716; *MacPherson v. Schram* (C. C. A. 5th, 1940) 112 F. (2d) 674, 675; *Barbour v. Thomas* (C. C. A. 6th, 1936) 86 F. (2d) 510, 514, cert. den. 300 U. S. 670; *Haight v. First Trust & Deposit Co.* (N. Y. 1940) 33 F. Supp. 72; aff'd (C. C. A. 2nd, 1940) 112 F. (2d) 572; *Culhane v. Smith* (Ill. 1937) 19 F. Supp. 226; *Schram v. Tobias* (Mich. 1941) 40 F. Supp. 470, 472; *Schram v. Costello* (Mich. 1940) 36 F. Supp. 525, 526; *Hardesty v. Corrothers* (W. Va. 1940) 31 F. Supp. 365, 367; *Ward v. Rice* (Pa. 1939) 29 F. Supp. 714; *Rankin v. Miller* (Del. 1913) 207 Fed. 602, 610; *Hall v. Ballard* (C. C. A. 4, 1937) 90 Fed. (2) 939, 945; *Howell v. Fogg* (C. C. N. J. 1939) 7 A. (2d) 282, 283; *Meeker v. Oramam Realty Corp.* (App. Div. N. Y. 1938) 2 N. Y. S. (2d) 574, aff'd 281 N. Y. 868, 24 N. E. (2d) 502; *White v. Liskovsky* (N. J. 1938) 3 Atl. (2d) 123, 124; 2 Morse on Banks & Banking (6th Edition) sec. 678, pp. 1410, 1411; 7 Am. Jur. sec. 147, p. 116.

such construction should not be overturned unless clearly wrong or unless a different construction is plainly required. *Inland Waterways Corp. v. Young*, (1940) 309 U. S. 517, 524-5; *United States v. Jackson*, (1930) 280 U. S. 183, 193; *Brewster v. Gage*, (1930) 280 U. S. 327, 336; *United States v. Finnell*, (1902) 185 U. S. 236, 244; *Corsicana National Bank of Corsicana v. Johnson*, (1919), 251 U. S. 68, 83; *Heath v. Wallace*, (1891) 138 U. S. 573, 582; *United States v. Johnston*, (1888) 124 U. S. 236, 253; *Brown v. United States*, (1885) 113 U. S. 568, 571; *United States v. Moore*, (1877) 95 U. S. 760, 763.

The practice followed in this case of extending the original date for payment of the stock assessment has been followed in many instances by the Comptroller in connection with the liquidation and winding up of insolvent national banks.⁴ The courts have noticed this practice and have approved it as reasonable. The United States Court of Appeals for the District of Columbia in *Strasburger v. Schram*, (App. D. C. 1937) 93 F. (2d) 246, had for consideration the question of whether the District of Columbia statute of limitations started to run on the date on which the Comptroller levied the assessment against the stockholders of the First National Bank-Detroit, or on the final date fixed for payment of the assessment after the extensions. The court in that case took judicial notice of the longstanding practice of the Comptroller of extending the time for payment of

⁴ The records in the Office of the Comptroller of the Currency disclose that during the five years ending in 1935 the Comptroller extended the original date set for payment of stock assessments in 46 insolvent national bank receiverships and that in these 46 receiverships there were a total of 57 extensions of the payment dates. The total stock assessments involved in said 46 receiverships amount to \$46,245,000. One such receivership is the First National Bank-Detroit with a stock assessment of \$25,000,000. The 78th Annual Report of the Comptroller of the Currency for the year ended October 31, 1940 indicates the total assessment upon shareholders and the collections from stock assessments as of the date of the report as well as other information concerning the particular receiverships. Table #68, page 330. (House Document #25, 77th Congress, 1st Session).

such stock assessment liabilities and held the statute of limitations did not start to run until the last date fixed for payment. The Court speaking through Mr. Justice Groner said (at page 248):

“We take judicial notice of the fact that for many years it has been the general practice of the Comptroller, after determination that an assessment on stockholders in a national bank is necessary and of the amount thereof, to fix a date when payment must be made. The practice is a reasonable one, since it furnishes time and opportunity to the debtor to pay without suit and in some cases opportunity for reorganization and resumption of business; and we have been referred to no law and have found none ourselves to challenge the authority of the Comptroller to fix the time of payment *and to extend it within reasonable limits from time to time. Nor have we any doubt that when this is done the receiver cannot commence an action against the stockholder until after the date fixed for the simple reason that until such date the assessment is not due; or, in other words, does not exist as a complete right which the owner may enforce by going into court.* This was the view expressed by Judge Sanborn in the case of *Deweese v. Smith* (C. C. A.) 106 F. 438, 441, 66 L. R. A. 971. There he said: ‘The acts of congress confer the power and impose the duty upon the comptroller to determine within the statutory limit the amounts that shall be paid by each stockholder upon his individual liability, and the times when he shall pay these amounts. The liability of the shareholder does not mature—does not become due—until the comptroller adjudges it to be payable and demands it, and it falls due in such amounts and at such times as he decrees.’” (Italics ours.)

There is nothing new or unusual about this wholesome practice long followed by the Comptroller *in the interest of shareholders of insolvent national banks in receivership.* In nearly eighty years of supervising the liquidation of insolvent national banks the Comptroller has followed a number of practices with respect to the levying and collection of stock assessments, which practices have in the past been

approved by the courts where such discretionary power has been challenged. It must be admitted that such practices are followed by the Comptroller solely for the benefit of the shareholders for the purpose of reducing or ameliorating the hardships of such stock assessments as well as in the interest of sound business and economic considerations.

This Court had occasion to examine into the practice followed by the Comptroller in *Korbly v. Springfield Institution for Savings*, (1917) 245 U. S. 330, a case where the Comptroller levied an assessment of 100 per cent upon shareholders of an insolvent national bank in receivership and made the assessment payable May 15, 1902. Thereafter the shareholders submitted and the Comptroller approved a plan for taking up certain of the assets of the insolvent bank in the expectation of raising sufficient funds to meet its obligations. On July 22, 1902 the Comptroller advised the shareholders that collection of the assessment would be suspended. The voluntary plan submitted by the stockholders did not realize the expected return and it was thereafter necessary for the Comptroller to make a second assessment which was levied four and one-half years after the first payment date fixed in the original order of assessment. The stockholders raised the question of the authority of the Comptroller to withdraw the first assessment and to levy a second assessment. This Court fully sustained the action and practice of the Comptroller and stated (at page 333):

"From the earliest days of the administration of the National Banking Act to this case attempts have been made in many forms to give to it a technical construction which would so restrict the powers of the Comptroller as to greatly delay and impede the settlement of the affairs of insolvent banks. But this court has uniformly declined to narrow the act by construction and has placed a liberal interpretation upon its provisions to promote its plain purpose of expeditiously and justly winding up the affairs and paying the debts of such unfortunate institutions. *Studebaker v. Perry*, 184 U. S. 258; *Kennedy v. Gibson*, 8 Wall. 498; *United*

States v. Knox, 102 U. S. 422; *Bushnell v. Leland*, 164 U. S. 684; and *Bowden v. Johnson*, 107 U. S. 251. There is nothing in the act to prevent the Comptroller from withdrawing an assessment before it is paid, or when it is partly paid, if it should be concluded that further payment is not necessary, and no form is prescribed in which such action shall be taken by him. *A large executive discretion is given to the Comptroller in this respect to adjust the assessments made, to the exigencies of each case, so that the shareholders may not be burdened by paying more than is necessary or at a time when the money for any reason cannot be advantageously used.* The wisdom of giving such large discretion to the Comptroller finds excellent illustration in the case before us. All persons interested in this bond transaction were convinced, in July, 1902, that further payment than that which had been made would not be needed, and a construction should not be given to the act, its specific terms not requiring it, which would prevent such action as was taken by the Comptroller in withdrawing for the time being the unpaid portion of the first assessment. We conclude that the claim that the Comptroller did not have power to recall the first assessment in whole or in part is unsound in principle and wholly unsupported by the terms of the act or by court decisions." (Italics ours.)

Another practice long followed by the Comptroller incident to the collection of stock assessment liabilities was approved by this Court in the case of *Rankin v. Barton*, (1905) 199 U. S. 228, wherein the Kansas courts had applied a local statute of limitations in denying the right of the national bank receiver to collect a second assessment of \$19.00 a share levied six years after the Comptroller had levied an assessment of \$75.00 per share upon the stockholders of the insolvent national bank. The funds derived from the collection of the first assessment were not sufficient to pay the debts of the insolvent national bank and the Comptroller found it necessary to levy another assessment of \$19.00 upon each share of stock. In reversing the decisions of the state courts, this Court said (at page 231):

"We think the court overlooked the official character and power of the Comptroller of the Currency, and the decision of this Court declaring them."

The above referred to cases involved situations where new assessments or additional assessments against shareholders were made years after the first assessment was levied,⁵ whereas, in the instant case the various extensions of time after the date originally set for payment of the assessment totaled less than eleven months.

The purpose and reasons for these extension orders are of impelling weight in the consideration of the Federal questions raised. In the respondent's brief in opposition to the petition for certiorari the following statements are made:

"The learned Chancellor felt bound by the decision by the United States Court of Appeals in the case of Coffey, Receiver, v. Fisher (U. S. C. C. A.), 100 Federal Reporter (2d) 51, involving the identical extensions here under consideration, * * * (P. 4)

and on pages 5 and 6 of said brief the further statement is made:

"While there is nothing in the record before the Court to indicate why these suspensions were made, yet in Coffey v. Fisher, supra, it appears that they were made at the request of certain stockholders being represented by a committee. * * *

As indicated by the foregoing statements, the case of *Coffey v. Fisher*, (C. C. A. 6) 100 F. (2d) 51, involved "the identical extensions here under consideration". On page 52 of the reported opinion, the Appellate Court, in referring to said assessment and the extensions of time of payment thereof, and the reasons for said extensions, as disclosed by that record, stated:

⁵ For other decisions of this Court upholding similar practices in other National bank stock assessment cases see *U. S. v. Knox*, 102 U. S. 422; *Studebaker v. Perry*, 184 U. S. 258.

"The plaintiff appealed from an order sustaining a demurrer to his declaration. The declaration alleges that he was Receiver of the First National Bank of Chattanooga and that on April 19, 1934, the Comptroller of the Currency levied an assessment against each and every share of its capital stock for 100% of the par value thereof, payable on May 26, 1934; that on May 17, 1934, the Comptroller extended the time for payment subject to further order, and that on June 19, 1934, the time of payment was further extended by the Comptroller until June 26, 1934; that on June 22, 1934, the time was again extended by the Comptroller subject to further order; that *these extensions were made at the request of the stockholders through a committee which protested the necessity of the hundred per cent assessment and requested a reappraisal of the assets of the bank; that finally the reappraisal was completed and the necessity for the assessment was established to the satisfaction of the committee* and that the Comptroller then, on March 11, 1935, further extended payment on the assessment to April 15, 1935; that under date of March 13, 1935, plaintiff gave notice of the assessment to all the stockholders including the defendant, J. G. Fisher, Executor of the Estate of S. F. Gettys, deceased." (*Italics ours.*)

The time necessary to make the re-appraisal is indicated by the fact that the book value of this bank's assets at the date of failure was \$7,506,036 (78th Annual Report of the Comptroller of the Currency to Congress for the Year ended October 31, 1940) (House Document No. 25, 77th Congress, First Session, Table No. 68, page 372). The proceeds of the bank's assets, plus stock assessment collections totaling \$1,649,975.53 as of June 30, 1942, have permitted the payment to date of dividends totaling 98.444 per cent to depositors and creditors.

As stated, less than eleven months elapsed between the first payment date in the original order levying the assessment and the final date fixed for payment and petitioner submits that the Comptroller acting in a matter calling for the exercise of his administrative discretion had the power and authority under these circumstances to amend his orig-

inal order of assessment by fixing the later date for payment. *Rawlings v. Ray*, *supra*; *Adams v. Nagle*, 303 U. S. 532, 540. *The receiver has no authority to bring a suit upon the assessment until the date finally set by the Comptroller for payment has arrived.* This Court recognized this principle in *Kennedy v. Gibson*, 8 Wall. 498, wherein it was stated (at page 505):

"The receiver is the instrument of the comptroller. He is appointed by the comptroller, and the power of appointment carries with it the power of removal. It is for the comptroller to decide when it is necessary to institute proceedings against the stockholders to enforce their personal liability, and whether the whole or a part, and if only a part, how much, shall be collected. These questions are referred to his judgment and discretion and his determination is conclusive. The stockholders cannot controvert it. It is not to be questioned in the litigation that may ensue. He may make it at such time as he may deem proper, and upon such data as shall be satisfactory to him. This action on his part is indispensable, whenever the personal liability of the stockholders is sought to be enforced, and must precede the institution of suit by the receiver."

It would seem that the courts below failed entirely to give consideration to the statement by this Court in the recent *Rawlings v. Ray* case to the effect that the question as to the time when there was a complete and present cause of action so that the receiver could enforce by suit the liability imposed by the Comptroller's assessment, is a Federal question and turns upon the construction of the assessment and the authority of the Comptroller to make it under applicable legislation. The effect of the decisions of the courts below is to thwart and impede the Comptroller and the Receiver in their duty to collect the assessment liability.⁴ It will be noted that the accrual date for the alleged

⁴ The Comptroller's actions in collecting stock assessment liabilities from the shareholders in insolvent national banks may not be thwarted or impeded by state law. *Seabury v. Green*, 294 U. S. 165, 169; *Forrest v. Jack*, 294 U. S. 158, 162.

cause of action as determined by the Chancery Court is the first date set by the Comptroller for payment of the assessment liability and is not a date fixed by the Chancery Court having supervision of the insolvent decedent's estate as a date on which all claims must be filed. In other words, no other creditor of the insolvent decedent's estate is governed by the May 26, 1934 date with respect to the time in which a claim must be filed or suit commenced in the Chancery Court exercising jurisdiction over the estate in question. The effect of the decisions by the courts below results in arbitrary discrimination and is based on a conclusion which is unsound and directly in conflict with this court's decision in *Rawlings v. Ray*. To that extent this case does not hinge on the application of a nondiscriminatory state statute applicable to all creditors alike, such as was the case in *Pufahl v. Estate of Parks, supra*.

Inasmuch as the question in the instant case is Federal in its nature, petitioner submits that the state courts fell into error in not following the decision of this Court in *Rawlings v. Ray, supra*, which decision should have been followed, any state law, decision or rule to the contrary notwithstanding. *Chesapeake & Ohio Ry. v. Martin*, 283 U. S. 209, 220; *United Land Association v. Abrahams*, 208 U. S. 614.

(c). The Tennessee Statutes.

Respondents rely on *Coffey v. Fisher, supra*, a case involving this receivership, wherein the receiver sued to enforce the assessment liability of the estate of a deceased stockholder. While the United States Circuit Court of Appeals held in the *Coffey* case that the suit was barred under Section 8225 of the Tennessee Code, the point involved was not whether the six months statute of limitations period ran from the date of the Comptroller's first order levying the assessment or from the date last set for payment of the assessment, but rather whether the statute applied at all. Having found that Section 8225 of the Tennessee Code did apply, the Circuit Court of Appeals said in either case the

suit was barred by the statute. (See page 53 of the opinion.) The court then went on to discuss whether Section 8608 was the applicable statute of limitations and it was in connection with the discussion of Section 8608 that the Circuit Court of Appeals said the various extensions for time of payment should not be regarded as tolls of the statute and in view of the provisions of Section 8604 of the Tennessee Code (discussed *infra* at page 26) the suit was barred even upon the receiver's contention that Section 8608 applied. Of course, the Circuit Court of Appeals' opinion in *Coffey v. Fisher*, *supra*, was handed down long before this Court decided the case of *Rawlings v. Ray*, *supra*.

Section 8225 of the Tennessee Code reads in part as follows:

"As to account, demands and claims not so matured or accrued, the period allowable before bar is six months from the date the cause of action thereon accrued."

The six months period referred to in the last sentence of this section of the Tennessee Code applies in this case (R. 91).

The Supreme Court of Tennessee has consistently held that the limitation period prescribed in this statute does not begin to run against a debt or cause of action until the right to sue accrues. *Bradford v. McLemore*, 11 Tenn. 318; *Trott v. West*, 17 Tenn. 433; *Caplinger v. Vaden*, 24 Tenn. 629; *Reeves v. Pulliam*, 66 Tenn. 119; *Henry v. Mills*, 69 Tenn. 144; *Jones v. Whitworth*, 94 Tenn. 602; *Woods' v. Woods*, 99 Tenn. 50; *Gillespie v. Broadway Nat'l Bank*, 167 Tenn. 245.

The Supreme Court of Tennessee has also consistently held that the state statute of limitations will not begin to run until there is a creditor with a present right to sue. *Bradford v. McLemore*, 11 Tenn. 318; *Atkinson v. Brooks*, 18 Tenn. 484; *Greenway v. Hunter*, 19 Tenn. 73; *Maynard v. May*, 42 Tenn. 44; *Jones v. Whitworth*, 94 Tenn. 602.

The words in the various state statutes of limitations including Section 8225 of the Tennessee Code "from the date the cause of action thereon accrued" seem to have their usual meaning and refer to the time suit may be maintained to enforce a claim. *City of Knoxville v. Gervin* (1936) 169 Tenn. 532, 544, 89 S. W. (2d) 348, 353; *Blevins v. Alexander*, 36 Tenn. 583, 585; *Morristown v. Davis* (1937) 172 Tenn. 159, 110 S. W. (2d) 337, 340; *Jones v. Whitworth* (1895) 94 Tenn. 602; 30 S. W. 736.

As early as 1857, the Supreme Court of Tennessee in *Blevins v. Alexander*, 36 Tenn. 583, held (at page 585):

"To enable the plaintiffs to maintain their action in this case, as in all others, there must have existed at the commencement of the suit, which was the issuance of the original writ or summons, a valid, legal cause of action. It is not sufficient that there be an inchoate cause of action, which becomes complete pending the action."

In *Jones v. Whitworth*, 94 Tenn. 602, the Supreme Court of Tennessee held the period of limitation began to run at the date of maturity of accounts, debts and claims not due as of the time of the qualification of the executor or administrator, stating (at page 616):

"Under either or both of these sections, as under the original Act, the period of limitation begins only when two things concur—(1) there must be a personal representative capable of being sued; and (2) there must be a creditor with a present right to sue.

"The administrators of Evans were qualified in May, 1884, as already stated, but this statute did not begin to run against complainant at that time, because he did not then have a right to sue."

It appears clear, therefore, that the words "from the date the cause of action thereon accrued" in the Tennessee statutes have their customary meaning and that the Court of Appeals clearly misapplied Section 8225 of the Tennessee Code in not following the decision of this Court in *Raw-*

lings v. Ray, supra, to the effect that the receiver's cause of action could not accrue until such time as suit might have been maintained after April 15, 1935.

Section 8604 of the Tennessee Code provides:

"When a right exists, but a demand is necessary to entitle the party to an action, the limitation commences from the time the plaintiff's right to make the demand was completed, and not from the date of the demand."

The Memorandum Opinion of the Chancellor dated January 22, 1941 makes no mention of Section 8604 of the Tennessee Code (R. 84-87), but said statute is referred to and relied upon by the Court of Appeals in its opinion affirming the decision of the Chancery Court on the statute of limitations question. (R. 92). The Record discloses that the receiver under date of March 13, 1935, gave notice of the assessment to each and every stockholder of the bank, including Annie R. Nottingham, as Executrix of the Estate of C. C. Nottingham, together with a copy of the orders of the Comptroller levying the assessment. This final order of the Comptroller was dated March, 11th and was the order which extended the time for payment of the assessment to April 15, 1935. (R. 9, 76). It will be noted that the Receiver's answer and cross bill were filed August 2, 1935 and it must be conceded that the final order of the Comptroller extending the time for payment of the assessment, the date of said payment and the date of notice to all stockholders were all less than six months prior to the date of filing suit. If Section 8604 of the Tennessee Code has any application at all, it is obvious that its terms were complied with through the above mentioned actions by the Comptroller and his agent the Receiver less than six months before the date suit was filed for collection of the assessment liability.

Applying the strictest possible construction of the statute against petitioner, in no event could the receiver's right to make demand for payment be completed before March 11, 1935, the date the Comptroller in the exercise of sound

administrative discretion made his final order extending time for payment of the assessment to April 15, 1935.

In denying that the various extensions of time for payment were effective the Court of Appeals of Tennessee held directly contrary to the decision of this Court in *Rawlings v. Ray*, *supra*, wherein it was determined:

- (1) The question as to the time when there was a complete and present cause of action so that the receiver could enforce by suit the liability imposed by the Comptroller's assessment is a *Federal question*.
- (2) There is no ground for questioning the authority of the Comptroller in making the assessment to fix a later date for its payment and *prior to such payment date suit could not be maintained by the receiver*.

In view of the policy and practice adopted by the Comptroller of the Currency in extending payment dates for collection of stock assessments, it is obvious the Court of Appeals erroneously applied Section 8604 of the Tennessee Code in determining that the six months' period prescribed under Section 8225 of the Tennessee Code barred the receiver's action for collection of the stock assessment in this case.

IX.

CONCLUSION.

Petitioner submits that the decisions of the Tennessee courts that the six months' period of limitation provided for in Section 8225 of the Tennessee Code commenced to run from the first payable date, rather than the date finally fixed by the Comptroller for payment of the assessment, are in conflict with the decisions of this Court and the other federal courts and should be reversed in that:

- (1) The courts below failed to give effect to the action of the Comptroller in extending the original payment date for the assessment liability of shareholders of the First National Bank of Chattanooga in receivership to April 15, 1935.

- (2) The courts below held the right of the Comptroller to extend the original payment date for the stock assessment was only an implied right.
- (3) The decisions of the courts below disregard the power and authority vested in the Comptroller under the National Bank Act to fix future payment dates for stock assessment liabilities.
- (4) The courts below failed to take judicial notice of the administrative practice and policy followed by the Comptroller in fixing future payment dates for stock assessment liabilities.
- (5) The courts below failed to recognize that the question as to the time when there was a complete and present cause of action in the receiver to enforce by suit the liability imposed by the Comptroller's assessment is a federal question.

It is submitted that the foregoing discussion and citation of authorities demonstrate that the decisions of the courts below were erroneous and should be reversed.

Respectfully submitted,

S. BARTOW STRANG,
Attorney for Petitioner.

JOHN F. ANDERSON,
LEE ROY STOVER,
HARRIET BUCKINGHAM,

*Attorneys for the Comptroller of the Currency,
Of Counsel.*

APPENDIX.**U. S. C. Title 12, sec. 63.**

The shareholders of every national banking association shall be held individually responsible for all contracts, debts, and engagements of such association, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares; except that shareholders of any banking association existing on June 22, 1874, under State laws, having not less than \$5,000,000 of capital actually paid in, and a surplus of 20 per centum on hand, both to be determined by the Comptroller of the Currency, shall be liable only to the amount invested in their shares; and such surplus of 20 per centum shall be kept undiminished, and be in addition to the surplus provided for in this chapter; and if at any time there is a deficiency in such surplus of 20 per centum, such association shall not pay any dividends to its shareholders until the deficiency is made good; and in case of such deficiency, the Comptroller of the Currency may compel the association to close its business and wind up its affairs under the provisions of this chapter relating to dissolution and receivership. (R. S. sec. 5151; Dec. 23, 1913, c. 6, sec. 23, 38 Stat. 273.)

U. S. C. Title 12, Sec. 64.

The stockholders of every national banking association shall be held individually responsible for all contracts, debts, and engagements of such association, each to the amount of his stock therein, at the par value thereof in addition to the amount invested in such stock. The stockholders in any national banking association who shall have transferred their shares or registered the transfer thereof within sixty days next before the date of the failure of such association to meet its obligations, or with knowledge of such impending failure, shall be liable to the same extent as if they had made no such transfer, to the extent that the

subsequent transferee fails to meet such liability; but this provision shall not be construed to affect in any way any recourse which such shareholders might otherwise have against those in whose names such shares are registered at the time of such failure. (Dec. 23, 1913, c. 6, Sec. 23, 38 Stat. 273.)

U. S. C. Title 12, Sec. 66.

Persons holding stock as executors; administrators, guardians, or trustees, shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward, or person interested in such trust funds would be, if living and competent to act and hold the stock in his own name. (R. S. Sec. 5152.)

U. S. C. Title 12, sec. 191.

Whenever any national banking association shall be dissolved, and its rights, privileges, and franchises declared forfeited, as prescribed in section 93, or whenever any creditor of any national banking association shall have obtained a judgment against it in any court of record, and made application, accompanied by a certificate from the clerk of the court stating that such judgment has been rendered and has remained unpaid for the space of thirty days, or whenever the comptroller shall become satisfied of the insolvency of a national banking association, he may, after due examination of its affairs, in either case, appoint a receiver who shall proceed to close up such association, and enforce the personal liability of the shareholders, as provided in section 192. (June 30, 1876, c. 156, sec. 1, 19 Stat. 63.)

U. S. C. Title 12, sec. 192.

On becoming satisfied, as specified in sections 131 and 132 of this title, that any association has refused to pay its circulating notes as therein mentioned, and is in default, the

Comptroller of the Currency may forthwith appoint a receiver, and require of him such bond and security as he deems proper. Such receiver, under the direction of the comptroller, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like order, may sell all the real and personal property of such association, on such terms as the court shall direct; and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders. Such receiver shall pay over all money so made to the Treasurer of the United States, subject to the order of the comptroller, and also make report to the comptroller of all his acts and proceedings. * * * (R. S. sec. 5234; May 15, 1916, c. 121, 39 Stat. 121; Aug. 23, 1935, c. 614, sec. 339, 49 Stat. 721.)

Michie's Tennessee Code of 1932 Annotated.

Sec. 8225. *Creditors to sue, when.* The creditors of deceased persons, whether the former live within or without this state, shall, within eighteen months (which period shall be deemed to include the six months protective period) from the qualification of the executor or administrator, file with the latter their accounts, demands and claims, that are matured or accrued causes of action at the date of such qualification, and bring suit for the recovery thereof, or be forever barred. As to accounts, demands and claims not so matured or accrued, the period allowable before bar is six months from the date the cause of action thereon accrued.

Sec. 8601. *Ten years against guardians, executors, administrators, public officers, and on judgments.* Actions against guardians, executors, administrators, sheriffs, clerks, and other public officers on their bonds, actions on judgments and decrees of courts of record of this or any other state or government, and all other cases not expressly

provided for, shall be commenced within ten years after the cause of action accrued.

Sec. 8604. *Time runs from accrual of right, not demand.* When a right exists, but a demand is necessary to entitle the party to an action, the limitation commences from the time the plaintiff's right to make the demand was completed, and not from the date of the demand.

Sec. 8608. *Against personal representative.* Actions against the personal representatives of a deceased person shall be commenced within eighteen months, including the six months' protective period, after the qualification of the personal representative, if the cause of action accrued in the lifetime of the deceased, or, otherwise, from the time the cause of action accrued. (1789, Ch. 23, sec. 4, modified.)

